BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

MICHAEL E. BILLINGS	}
Claimant VS.	Darket No. 202 002
ESSEX GROUP, INC.	Docket No. 202,093
Respondent AND	}
INSURANCE COMPANY STATE OF PENNSYLVANIA Insurance Carrier	

ORDER

Claimant appeals from a Preliminary Hearing Order of August 22, 1995 wherein Administrative Law Judge Floyd V. Palmer denied claimant benefits finding claimant had failed to establish he had provided notice of accident and injury within ten (10) days of March 20, 1995 and had further failed to prove just cause for having not provided notice within the ten (10) days. The Administrative Law Judge went on to find claimant had proven accident occurring on March 20, 1995.

ISSUES

Whether claimant provided notice of accident within ten (10) days of March 20, 1995 and, if not, whether just cause was established as to claimant's failure to so provide notice pursuant to K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and the purpose of preliminary hearing, the Appeals Board finds as follows:

The issue above enumerated is one listed in K.S.A. 44-534a as appealable from a preliminary hearing order. Respondent's contention that the Appeals Board does not have jurisdiction over this appeal due to the fact that claimant, although raising notice and just cause as an issue, failed to allege the Administrative Law Judge had exceeded his jurisdiction, has no merit.

The medical evidence in the record does support a finding that claimant suffered accidental injury arising out of and in the course of his employment on March 20, 1995. The claimant's testimony and the medical records point to March 1995 as a general date of accident with medical records specifically listing March 20, 1995 as the injury discussed by claimant when he was first examined by the medical health care providers.

The record is void of any evidence showing claimant provided notice to the respondent within ten (10) days of March 20, 1995. The record is further void of any

IT IS SO ORDERED.

evidence as to whether just cause existed to explain claimant's failure to provide notice within the time limit specified in K.S.A. 44-520. As such the Appeals Board finds that while claimant has proven accidental arising out of and in the course of his employment on March 20, 1995, claimant has failed to prove notice within ten (10) days of said accident date as required by K.S.A. 44-520 and has failed to provide just cause as to this failure to provide notice.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer date August 22, 1995 should be, and is, affirmed in all respects.

Dated this day of November 1995.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: Frederick J. Patton II, Topeka, KS Matthew S. Crowley, Topeka, KS Floyd V. Palmer, Administrative Law Judge Philip S. Harness, Director